rier's tracks. Swift & Co. held their own cars under lading on this siding over forty-eight hours, and refused to pay the demurrage charge. This action was brought by the railway company to recover these charges. *Held*, that the plaintiff recover. *Swift & Co.* v. *Hocking Valley Ry. Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 376.

For a discussion of the case, see NOTES, p. 756.

LANDLORD AND TENANT — SURRENDER BY OPERATION OF LAW — WHETHER TENANT CAN RECOVER AN EXCESS OVER RENT RESERVED RECEIVED BY LANDLORD. — A clause in a lease provided that, if the premises should become vacant, the lessor was authorized to enter, re-rent the land, and apply the proceeds to the rent due from the lessee. The lessee vacated the premises and stopped paying rent. He offered to surrender to the lessor; but the latter would not accept. The lessor leased the premises for a greater amount than the original rent. The lessee seeks to recover the excess. *Held*, that he may not recover. *Whitcomb* v. *Brant*, N. J. Ct. Err. & App. (not yet reported).

A surrender of an estate puts an end to the tenant's liability on the lease, unless by an express contract the tenant has made himself liable. *Richardson* v. *Gordon*, 188 Mass. 279, 74 N. E. 344. See 1 TIFFANY, LANDLORD AND TENANT, 1179. Where the consent of both landlord and tenant cannot be implied there can be no surrender by operation of law. *Auer* v. *Penn*, 99 Pa. St. 370; *Brown* v. *Cairns*, 63 Kan. 584, 66 Pac. 639. But the court in the principal case conceives that the abandonment of the premises and failure to pay rent terminated the privity of estate, and that the lessee, being in default, cannot recover in quasi-contract. But privity of estate is not terminated merely by breach of covenant; in fact, the landlord has no power thereupon to evict a tenant unless a provision giving him such a right is inserted in the lease. *Vanatta* v. *Brewer*, 32 N. J. Eq. 268; *De Lancey* v. *Ganong*, 9 N. Y. 9. In the principal case the landlord expressly refused to exercise such a right. It must appear, therefore, that the lessee is still owner of the leasehold estate, and that the lessor, having collected the proceeds under an authorization by the lessee, is bound to account to him for them. 2 TIFFANY, LANDLORD AND TENANT, 1341.

LEGACIES AND DEVISES — PAYMENT — INTEREST BY WAY OF MAINTENANCE. — A widow bequeathed her leasehold residence to her daughter, contingent, however, upon the daughter's marrying or reaching twenty-one. At the death of the testatrix the daughter was an infant. She had not been receiving support from her mother. The question arises to whom the rents and profits of the residence belong until the daughter attains twenty-one or marries. *Held*, that the residuary legatees are entitled as against the daughter. *In re Eyre*, 142 L. T. 280.

A general legacy, contingent or vested, payable at a future date carries interest, not from the death of the testator but only from the time it is payable. *Heath* v. *Perry*, 3 Atk. 101. On the other hand, a specific legacy, if vested, carries interest from the death of the testator, even though the enjoyment of the principal is expressly postponed. See 2 ROPER, LEGACIES, 4 ed., 1250. A contingent specific legacy, however, does not bear interest until the happening of the contingency. See 2 WILLIAMS, EXECUTORS, 10 ed., 1170. An exception to this rule as to contingent specific legacies and general legacies arises on bequests from a parent to an infant child, in which cases the courts usually allow the child interest in the interim by way of maintenance. The basis of this exception is commonly said to be a rule of presumed intention of the testator — the court "will not presume the father . . . so unnatural as to leave a child destitute" meanwhile. *Incledon* v. *Northcote*, 3 Atk. 430, 438. In accordance with this view of presumed intention no gift of income will be implied where